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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,735	03/16/2004	Stacy Barrows	650033.15148	1838

7590 02/08/2005

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EXAMINER

NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/801,735	BARROWS, STACY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Tam Nguyen	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3-16-04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION*****Drawings***

1. The drawings are objected to because of the following minor informalities:

In Fig. 1, the lateral plane (14) appears to be angled when it should be substantially horizontal to clearly divide the roller into a top half (16) and a bottom half (18) as described in Paragraph 0021. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. The disclosure is objected to because of the following informalities:

Page 5, Paragraph 0021, the description of a conventional exercise roller in this paragraph is confusing because the applicant has used reference numbers that are also used to described similar components of the invention. The applicant is advised to disclose a drawing of a conventional exercise roller, label it Prior Art, and use different reference numbers to avoid confusion.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 4 recites the limitation "the top portion" and "the bottom portion" in lines 1-4.

That is, claim 3 upon which claim 4 is dependent, merely discloses a top and a bottom, not any particular top portion or bottom portion. There is insufficient antecedent basis for this limitation in the claim. Since the applicant uses the terms "top" and "top portion" and "bottom" and "bottom portion", the examiner will treat each term as referring to different parts of the invention.

4. In claim 5, lines 3-5, the phrase "means on the outside of the roller for changing the balance of the roller depending of whether the top or bottom is facing upward." is unclear. If the "means" refers to another component, then that component must be shown in the drawings and disclosed in the specification. If the "means" simply refers to the shape of the roller such that placement of the roller on a particular side changes the balance of the roller, then that must be clearly stated in the claim. The examiner will assume that latter interpretation to expedite the prosecution.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Ranz (1,274,595).

5. As to claims 1 and 2, Ranz discloses an exercise device comprising an elongated roller formed of a compressible material, an outer surface (7), an axis (A), a curved top (B) on one side of the axis and a curved bottom (C) on the other side of the axis wherein the circular curvature of the top of the roller is different from the circular curvature of the bottom of the roller, each having a different radius of curvature (see Page 1, lines 8-16 & Appendix 1, Fig.1 & Examiner's Version of Fig. 2).

6. As to claim 3, Ranz discloses an exercise device comprising an elongated roller formed of a compressible material having an axis (A) and a first sectional plane (D) parallel to the axis that divides the roller into a top and bottom wherein the top and bottom are curved and the curve of the top of the roller is different from the curve of the bottom of the roller (see Appendix 1).

7. As to claim 4, Ranz discloses an exercise device as described above (see discussion of claim 3). Ranz further discloses that the curvatures of the top portion (a) and the bottom portion (b) are circular but the radius (R1) of the top portion is different from the radius (R2) of the bottom portion (see Appendix 1).

8. As to claim 5, Ranz discloses an exercise device comprising an elongated roller formed of a compressible material and having an axis (A) and a first sectional plane (D) parallel to the axis that divides the roller into a top (B) and bottom (C) wherein the different shape of the top and bottom changes the balance of the roller depending on whether the top or bottom is facing up relative to a support surface (see Appendix 1).

#### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Graham '841 discloses a roller-like structure (18) having a top surface and a bottom surface each with a distinct curvature (see Fig. 3).


Scheurer '644, Swezey et al. '703, Boxrud '771, Bonaddio et al. '146 and Handel '689 each arguably discloses an elongated roller having a curved top and a curved bottom that are different from each other.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F, 9-5.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 27, 2005

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STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332